



UNITED STATES PATENT AND TRADEMARK OFFICE

A

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,277	01/10/2002	Eric M. DoBrava	1001.1482101	8439

26191 7590 03/03/2005

FISH & RICHARDSON P.C.
3300 DAIN RAUSCHER PLAZA
60 SOUTH SIXTH STREET
MINNEAPOLIS, MN 55402

EXAMINER

NGUYEN, VI X

ART UNIT	PAPER NUMBER
----------	--------------

3731

DATE MAILED: 03/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

51

Office Action Summary	Application No. 10/044,277	Applicant(s) DOBRAVA ET AL.	
	Examiner Victor X Nguyen	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 19-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>09/2002</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Adams et al (5,527,292).

Adams discloses, in figs. 9-10, a catheter for use to treat stenosis in vessels without endangering the patient, including: an elongate shaft (255), a collection array (260) comprises a plurality of lumens (see col. 16, lines 13-15) disposed about a portion of the elongate shaft that having outer circumferential walls (268) spaced away from inner circumferential walls (267) by radial spacing members, and where the device further comprises a suction means (306). Note that the procedure in fig. 10 discloses the outer circumferential walls (268) is capable of engaging the inner wall of the blood vessel and is capable of rupturing plaque deposited in the blood vessel.

Claims 1 and 3-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Peacock III, (6,234,995).

Art Unit: 3731

Peacock III discloses a medical device system that meets the limitations of claim 1. The device includes an elongate shaft (41), a collection array (70) comprises a plurality of lumens (see col.18, lines 20-37) disposed about a portion of the elongate shaft that having outer circumferential walls (44) spaced away from inner circumferential walls (43) by radial spacing members, where the collection array is radially extendible and collapsible (see col. 18, lines 60-67), where the means for radially extendible and collapsible includes a hydraulic means that comprises a balloon (71).

As to claims 7-12, Peacock III discloses in fig.3b, the first circumferential wall defines at least in part an outer surface of a balloon (71), and where the first and second circumferential walls are arranged such that the collection array is collapsible into a predefined shape (see col. 18, lines 33-44).

As to claims 13-18, Peacock III discloses the distal end of the collection array includes a plurality of collection ports (46'), and the proximal end of the collection array includes a plurality of retrieval ports (68), where the retrieval ports are fluidly connectible to a suction means (250), and where at least one collection lumen provides fluid communication between at least one collection port and at least one retrieval port. It is interpreted that the catheter is only a part of the recitation of intended use in the preamble of claim 1. Note: The introductory statement of intended use and all other functional statements have been carefully considered but are deemed not to impose any structural limitations on the claims distinguishable over the Peacock et al reference which is capable of being used as claimed if one desires to do so. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Response to Amendment

Art Unit: 3731

2. Applicant's arguments with respect to claims 1-18 have been considered but they are not persuasive. Applicant is asked to please refer to the modified prior art rejection above wherein examiner addresses applicant's concerns regarding prior art rejections.

Conclusion

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3731

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Victor X Nguyen
Examiner
Art Unit 3731

Vn *VN*
3/1/2005



JULIAN W. WOO
PRIMARY EXAMINER